

a letter from ATCC confirms that payment has been made for maintenance until the year 2011. This letter substantiates that the prior payment was made in the normal course of business, the firm of Townsend and Townsend maintaining a deposit account at the ATCC.

It is believed appropriate to raise at this time, the fact that the subject cell line was deposited about one week after the filing date. It is submitted that under the ruling of Feldman v. Aunstrup, 186 USPQ 108 (CCPA 1975), in view of the accompanying declaration, the maintenance by Dr. Lundak of the cell line during that week and the deposit thereafter at the ATCC, fulfills the requirements under 35 USC 112. It is evident from the declaration that Dr. Lundak was quite capable of maintaining and insuring the maintenance of the subject cell line and did in fact maintain the subject cell line for the week intervening between the filing date and the deposit at the ATCC. Under Feldman v. Aunstrup, which looked to the maintenance of the cell line between the time of filing and the time of the deposit under the Argoudelis standards, and the deposit prior to the issuance of the patent, the subject fact situation supports the granting of the original filing date.

In view of the above amendment and remarks, the application is considered in good and proper form for allowance, and the Examiner is earnestly requested to pass this application to issue. Failing this, the Examiner is earnestly requested to enter the above amendment for purposes of further procedure.

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of this

application, the Examiner is invited to call the undersigned attorney, collect, at (415) 493-2590.


Respectfully submitted,

TOWNSEND and TOWNSEND

Date

4/11/83

By



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BIR/gs

Enclosures

1. Declaration of Lundak
2. Declaration of Ditzel
3. ATCC letter